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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of DAVID CANTARELLA and RUTH HERRERA.	
DAVID CANTARELLA, Appellant, v. RUTH HERRERA, Respondent.	G055857, G056098 (Super. Ct. No. 06D006157) O P I N I O N

Appeals from postjudgment orders of the Superior Court of Orange County, Claudia Silbar, Judge. Affirmed.

David Cantarella, in pro. per., for Appellant.

No appearance for Respondent.

* * *

Appellant David Cantarella (father) appeals from orders: 1) to pay back child support and for child care; 2) for attorney fees awarded as sanctions pursuant to Family Code section 271 (sanctions motion; all further statutory references are to this code unless otherwise stated); and 3) denying his motion to compel discovery. He makes a variety of arguments, including: 1) the court should have allowed him to conduct additional discovery; 2) the court should have granted his request for a continuance of a hearing; 3) the court failed to include certain income of respondent Ruth Herrera (mother) in determining the amount of child support; 4) the court failed to require mother to produce discovery after a prior order compelling her to do so; 5) the court used an altered income and expense declaration; 6) the court erred in ordering father to pay for child care; 7) the amount of child support ordered was erroneous; 8) the sanctions motion was filed by an attorney who was not of record at the time; 9) the amount awarded for sanctions was not supported by the evidence; and 10) the judge was biased and a new judge should be assigned on remand.

We find no error and affirm.

RULES VIOLATIONS AND DEFECTS IN FATHER'S BRIEF

Father's summary of facts was wholly inadequate, in violation of California Rules of Court (all further references to rules are to the California Rules of Court). Father failed to "[p]rovide a summary of the significant facts" as required by rule 8.204(a)(2)(C). Instead his brief summary of facts failed to include information necessary to understand his claims, and the scant facts that were included were a one-sided version in his favor. Because on several issues father argues insufficiency of the evidence he was required to "'summarize the evidence on that point, favorable and unfavorable, and show how and why it is insufficient. . . . He cannot shift this burden onto respondent, nor is a reviewing court required to undertake an independent examination of the record when appellant has shirked his responsibility in this respect.'" (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409, italics omitted.)

Father also improperly included facts that were not relevant to this appeal, including facts underlying his other appeal, (*In re Marriage of Cantarella and Herrera* (Mar. 29, 2019, G054843, G054900) [nonpub.opn.]) (*Cantarella 1*).

Additionally, father failed to provide a sufficient record of the proceedings in the family court in violation of rules 8.120, 8.122, and 8.124. A number of the documents necessary to understand the appeal were not included in the record as noted below.

In setting out the facts we have relied on colloquy with the judge, counsel, and father, and, although we were not required to do so, to a certain extent we have done our own research to provide context and a framework for the appeal to the extent possible. In some instances we have been unable to determine the exact facts.

Failure to comply with the court rules is a ground for forfeiture of claims. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294; *Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 53.) The fact father is appearing in propria persona makes no difference. A self-represented litigant is not entitled to "special treatment" (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 524) but is held to the same standards as a party represented by counsel (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [the appellant's issues forfeited due to defects in opening brief]).

To the extent we are able we address father's claims on the merits we will do so. Otherwise, the claims are forfeited for the reasons set forth above or as explained in our discussion of the issue.

FACTS AND PROCEDURAL HISTORY

The background facts are set out in *Cantarella 1* and are not repeated here.

In May 2017 the Orange County Department of Child Services (DCSS) filed an amended motion seeking child support from father.

On June 8, 2017 mother's lawyer, Abel Fernandez, filed a notice of hearing on a request for section 271 sanctions, seeking sanctions in the sum of $5,217 based on

father's violation of a court order to return child to mother.[1] On June 12, 2017 mother filed a substitution of attorney substituting herself in place of Fernandez. On July 6, 2017, Fernandez filed a notice of limited scope representation stating he was acting as mother's attorney for purposes of child custody and visitation matters in the trial court.

On August 28, 2017, Fernandez filed a declaration in support of the sanctions. He stated mother had to seek an emergency hearing to have child returned to her custody. Thereafter there was another hearing to have child returned, which requested the assistance of police. In addition mother had filed a contempt motion. The $5,217 in fees and costs requested in the motion was only for this work. Fernandez attached a billing summary to his declaration. The period during which the fees and costs were incurred was February through March and May 2017. The court awarded $3,500, to be paid to Fernandez in payments of $100 per month.

In July 2017, father apparently propounded form interrogatories and requests for admission to mother in connection with the DCCS child support matter. Mother served responses, including some objections, but the responses were not timely. In August 2017 father moved to compel further responses, arguing primarily the responses were incomplete or evasive. In August 2017, noting neither party had objected to him hearing the motion, Commissioner Minerich found father's discovery request was proper. He further found mother had served answers but they were untimely, and granted the motion to compel.

At this point the record is unclear and incomplete. According to statements made by father at the hearing, he was seeking documents pursuant to a demand for production. He claimed mother failed to produce documents and he thereafter filed a motion to compel. However, neither the original discovery request for documents nor the motion is in the record. At the hearing the court read from mother's response, apparently

[1] This was at issue in *Cantarella 1*.

to a motion to compel heard by the commissioner, where she stated she had previously responded to discovery and that a meet and confer was required before a motion for further responses may be filed. Although there is no order in the file, the commissioner denied the motion. Father then requested a judge hear the motion de novo.[2] This request is not in the record.

After hearing in November 2017, the trial judge denied the motion to compel, because there was no meet and confer and father failed to file a sufficient meet and confer declaration. It cannot be determined from the record to which discovery the motion was directed.

The court also issued an order requiring father to pay $667 per month for a total of $2001 for June through August 2017 for child support. Father was ordered to pay child support of $429 for September, $253 for October, and $96 for November and December, 2017. The court made findings as to the parties' income pursuant to the DissoMaster Calculation. The court found child care costs for June through November 2017 were $2,268, ordering half to be paid by father. The court found child support arrearages and costs of child care totaled $3,817 and ordered father to pay mother $200 per month beginning January 1, 2018 until paid in full.

Additional facts are set out in the discussion.

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[2] Presumably, the request was pursuant to section 4251, which provides family support cases are to be heard by a commissioner. If the parties do not object, the commissioner sits as a temporary judge. If a party objects, the commissioner hears the matter and makes factual findings and recommendations. If a party objects to the recommended order or if the order is erroneous, the judge hears the matter de novo. (*County of Orange v. Smith* (2002) 96 Cal.App.4th 955, 961.) There is no record father objected to the commissioner hearing the matter. Since the court heard the matter de novo, we will address the issue as if it had.

DISCUSSION

1. Discovery Responses From Mother

Father has two separate arguments about discovery responses from mother. Although unclear, it appears they relate to the same issue. Father's basic complaint appears to be that the commissioner originally granted his motion to compel further responses and when father filed an additional motion, the commissioner denied it. In addition, he claims the trial judge denied further responses based on a failure to meet and confer.

There is a basic problem with father's arguments—we do not have a sufficient record on which to decide the issue. Although there is one motion to compel further answers to interrogatories and requests for admission in the record, and an order from the commissioner granting the motion, the commissioner's purported order denying a motion to compel is not in the record. (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364 ["if it is not in the record, it did not happen"].)

Even if we were to attempt to dispose of this on the merits, none of father's arguments persuade. Under Code of Civil Procedure sections 2030.300, subdivision (b), 2031.310, subdivision (b)(2), and 2033.290, subdivision (b), a party moving to compel further responses to discovery must file a meet and confer declaration in accord with section 2016.040. Code of Civil Procedure section 2016.040 provides the meet and confer declaration must state facts showing the parties made "a reasonable and good faith attempt" to informally resolve "each issue presented by the motion." Failure to meet and confer or file a corresponding declaration warranted denial of the motion to compel.

Father does not dispute his failure to meet and confer or file a meet and confer declaration. This suffices to affirm the court's ruling. As to the substance of the issue, father merely states he did not believe the court properly applied the law. This is insufficient to support his claim. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 (*Benach*) [issue forfeited for failure to provide reasoned legal

argument].) If father wanted further discovery, he was required to follow statutory procedures. It was his failure to do so, and not any error by the court, that caused the motion to be denied.

Further, we review discovery rulings for abuse of discretion, which father has not shown. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.)

Father claims the order at issue was "ambiguous" or conflicted with the commissioner's initial order. Again, without a full record of all of the motions and orders we are unable to analyze this argument. In any event, the trial judge was conducting a de novo review so we are not reviewing the commissioner's order. Once father requested de novo review, any prior order was superseded and had no further validity.

Father asserts, without citation to the record, the trial judge did not read any of his filed documents. There is no evidence in the record to support this claim. Nor is there evidence to show the trial judge "did not care" about whether father had completed discovery.

Contrary to father's conclusion, the Fourteenth Amendment is not implicated in the denial of the motion to compel.

2. Request for Continuance

Two days before the scheduled November hearing on the motions, father filed a motion to continue the hearing on the ground mother had not timely responded to discovery, forcing him to file another motion to compel, with a hearing set for February. He asked that the November hearing be continued to that same February date. At that November hearing, during father's examination of mother he questioned her about job applications, to which she replied she had submitted several. Father then requested a continuance on the basis of mother's answer so he could propound discovery "and get to the bottom of this." The court denied the request, explaining it was too late and the hearing was almost completed. Father then mentioned he had filed a request to continue, which the court then denied.

The grant or denial of a request to continue is within the court's sound discretion. (*Dailey v. Sears Roebuck & Co*. (2013) 214 Cal.App.4th 974, 1004.) Father claims the court abused its discretion in denying the request to continue to prepare for trial but fails to provide any reason why. We have no idea about the substance of the discovery for which a motion to compel was allegedly pending or its impact on the hearing. (*Benach, supra,* 149 Cal.App.4th at p. 852.) Further, the court has inherent authority to control proceedings before it. (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.)

Rules 3.503 and 3.501(17), cited by father, are inapt. The former rule deals with requests to extend or shorten time and the latter is the definition of "serve and submit" requiring any documents to be submitted to the judge at a specified court address. These have no impact on father's claim a continuance should have been granted. Further Code of Civil Procedure section 404.2, which deals with selection of a review court in a coordination case, is irrelevant. And the court's failure to apply them does not support father's claim the court violated his due process and equal protection rights when it denied a continuance.

3. Child Support Calculations

Father asserts that although there was testimony mother had a second income, the court did not include it in calculating child support. He cites to testimony that mother worked approximately 12 hours a week caring for her father and received $11.50 an hour as payment. He also points to the five-page DissoMaster Data Screen. This is the extent of the substantive argument and it is insufficient to support his claim.

*Los Angeles County Dept. of Children & Family Services v. Superior Cou*rt (2005) 126 Cal.App.4th 144, 152 and *Rodman v. Superior Court* (1939) 13 Cal.2d 262, 269, which father cites without discussion, do not support his claim. Although unclear, we believe father is relying on the general rule that when a court acts in contradiction to a

statutory procedure it has exceeded its jurisdiction. Although we have no quarrel with that general proposition, it has no application here.

4. Alleged Altered Income and Expense Declaration

Father complains DCSS "dismantled and altered" and then refiled one of his income and expenses declarations. Father filed a written objection and also raised this claim at the hearing. He contends the court erred by using the allegedly altered income and expense declaration and by failing to rule on his objection. We are not persuaded.

First, a comparison of the two declarations shows the only difference is that father's address was blacked out. Substantively there is no difference. Second, there is no evidence DCSS filed the latter document, only father's claim to that effect. Third, there is no evidence the court relied on the latter document. In fact, the evidence is to the contrary. During the hearing the court delineated the specific income and expense declarations filed by father on which it was relying and father agreed. The alleged altered declaration was not included. Thus, there was no error. The court was not required to provide a "statement of reason" as to the objection.

5. Order to Pay Child Care

Father argues the court erred by ordering him to pay $378 per month for child care. This claim is without merit for several reasons.

Although mother testified she paid $378 per month for child care for child,[3] father does not direct us to an order requiring him to pay that amount and we could not find one. Because it is father's burden to show error, he had the duty to provide us with a sufficient trial court record in support of his arguments on appeal. (*Roberson v. City of Rialto* (2014) 226 Cal.App.4th 1499, 1507.) We cannot consider the issue without a copy of the order. (*Protect Our Water v. County of Merced, supra,* 110 Cal.App.4th at p. 364.)

[3] Father failed to include this testimony in his brief, in violation of rule 8.204(a)(2)(C) requiring him to summarize all significant facts.

The court found child care costs for a six-month period in 2017 to be $2,268 and ordered father to pay half, or $1,134. Divided by six $1,134 equals $189 per month. Even assuming father's arguments apply to this amount, he still cannot prevail.

Father contends mother testified she paid child care for her two other children. Also, without citation to the record, father claims child had been taking care of himself since he was eight years old. Given mother's testimony about the child care costs, these are arguments concerning the court's factual findings. We do not reweigh or resolve conflicts in the evidence or redetermine the credibility of witnesses. (*Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.)

This principle also defeats father's argument "the math does not add up," referring to mother's testimony about what she paid caregivers and for how many hours.

We reject father's unsubstantiated claim the court relied on a "credibility call" instead of testimony and evidence.

Citing *McGinley v. Herman* (1996) 50 Cal.App.4th 936 and *In re Marriage of Williams* (2001) 88 Cal.App.4th 808 father argues the court abused its discretion by setting amounts payable for child support and child care in favor of mother. Father fails to discuss either case or even to set out their citations, much less specific page references. This forfeits the argument. (*Benach, supra,* 149 Cal.App.4th at p. 852.) Moreover, we see nothing in either case to support his argument. The former dealt with a child custody award while the latter considered separation of siblings in determining a custody order, neither of which is at issue here.

6. Child Support

Father contends the court awarded an incorrect amount for child support for the period beginning in June 2017. He states the court did not account for income from mother's second job and as argument merely directs us to "[s]ee transcripts vers[u]s [D]issomaster print out." This is insufficient to support his claim. (*Benach, supra,* 149 Cal.App.4th at p. 852.)

On appeal we must presume the judgment is correct. (*Roberson v. City of Rialto, supra,* 226 Cal.App.4th at p. 1507.) Father did not meet his burden to show us any error.

7. Attorney Fee Sanctions

Section 271 allows the court to award attorney fees as sanctions when "'the conduct of each party or attorney . . . frustrates the policy of the law to promote settlement of litigation.'" (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1477.)

Father contends the motion was filed by Fernandez after he substituted out of the case and the court erred by filing it and by hearing it. This is incorrect. The substitution of attorney was not filed until after the motion was filed. The fact the substitution was signed earlier is irrelevant. It had not been filed or served. (*In re Marriage of Warner* (1974) 38 Cal.App.3d 714, 720; *In re Marriage of Borson* (1974) 37 Cal.App.3d 632, 637.)

Father's argument mother was not entitled to attorney fees under section 271 because she was in propria persona is also without merit. The fees were incurred when mother was represented by counsel and there is evidence Fernandez billed her for them.

Father cites *United States v. Mateo-Mendez* (9th Cir. 2000) 215 F.3d 1039 and *Matney v. Sullivan* (9th Cir. 1992) 981 F.2d 1016 to support his claim that choice of a proper standard of review is contextual. This principle of law has no bearing on father's argument. Likewise, rule 8.500(b), regarding grounds for Supreme Court review of an appellate court decision, is irrelevant.

Father points to section 271, subdivision (a), which prohibits the court from ordering a sanction if it imposes an "unreasonable financial burden" on the party against whom it is ordered. He argues the court knew how much he earned and that he could not afford to pay the sanction but ordered it nevertheless. This is not sufficient to show the

sanction was an unreasonable financial burden. We reverse an order imposing discovery sanctions only for "'"manifest abuse exceeding the bounds of reason."'" (*Doe v. United States Swimming, Inc*. (2011) 200 Cal.App.4th 1424, 1435.) Father has not shown such an abuse of discretion.

We also reject father's claim the court was required to provide a statement of decision supporting imposition of the sanction. When father objected to the sanction at the hearing, he told the court he wanted "a statement of reason." The court advised it had given a statement of decision on the record and was not required to prepare a written statement. The court was correct. No statement of decision is required when ruling on a motion. (*Lien v. Lucky Untied Properties Investment, Inc*. (2008) 163 Cal.App.4th 620, 625.)

Father also speculates that Fernandez did not report cash mother paid to him because Fernandez's billing summary and the register of actions do not agree. Again, this appears to be irrelevant and is insufficient argument for father to meet his burden to overcome the correctness of the court's ruling. (*Benach, supra,* 149 Cal.App.4th at p. 852.)

8. Judicial Bias

For each of the arguments raised father maintains the trial judge was biased and should be recused. He cites to comments the judge made such as, "you can appeal me," claiming he is unable to get a fair hearing from the judge and she has abused her discretion "for years." He also asserts the judge does not read any of his documents. He asks us to remand the matter for trial by a different judge.

There is not a shred of evidence to support these claims. The fact a judge makes unfavorable rulings does not demonstrate bias.

"When making a ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties. How could it be otherwise? We will not

hold that every statement a judgment makes to explain his or her reasons for ruling against a party constitutes evidence of judicial bias." (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219.) "'[W]hen the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies him [or her] in the trial of the action. It is his [or her] duty to consider and pass upon the evidence produced before him [or her], and when the evidence is in conflict, to resolve that conflict in favor of the party whose evidence outweighs that of the opposing party. The opinion thus formed, being the result of a judicial hearing, does not amount to [improper] bias and prejudice . . . .' [Citation.]" (*Id*. at pp. 1219-1220.)

Further, even a judge's erroneous rulings against a party do not constitute judicial bias. (*People v. Avila* (2009) 46 Cal.4th 680, 696.)

We have the authority to direct the case be assigned to a different judge in the interests of justice. (Code Civ. Proc., § 170.1, subd. (c.) However this power "should be 'used sparingly.'" (*In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 153.) None of the actions cited by father shows bias. Nothing in the record suggests the judge will be anything but fair. As we stated in *Cantarella 1*, the record shows the judge has been more than fair to father. The interests of justice would not be served by reassigning the case.

9. Miscellaneous

In addition to the issues discussed above, father included miscellaneous arguments in other sections of his brief without the separate headings required for each issue. (Rule 8.204(a)(1)(B); *Evans v. CenterStone Development Co.* (2005) 134 Cal.App.4th 151, 160.) These arguments have been forfeited for lack of discrete headings, authority, or reasoned legal argument. (*Provost v. Regents of University of California*, *supra*, 201 Cal.App.4th at p. 1294.)

DISPOSTION

The postjudgment orders are affirmed. Mother did not appear, no costs are awarded.

THOMPSON, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.